

AUG 8 1990

JOSEPH F. SPANIOL, JR.  
CLERK

In The  
**Supreme Court of the United States**  
October Term, 1989

UNION TEXAS PETROLEUM CORPORATION,  
AGIP PETROLEUM COMPANY and  
MINATOME CORPORATION,

*Petitioners,*

versus

P L T ENGINEERING, INC., STATE SERVICE COMPANY,  
INC., POWER WELL SERVICE, INC., GULF ISLAND-IV,  
BROWN & ROOT USA, INC. and SUB SEA  
INTERNATIONAL, INC.,

*Respondents.*

On Petition For Writ Of Certiorari To The United  
States Court Of Appeals For The Fifth Circuit

BRIEF OF POWER WELL SERVICE, INC., and  
GULF ISLAND IV, A LOUISIANA PARTNERSHIP,  
IN OPPOSITION TO PETITION FOR  
WRIT OF CERTIORARI

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August 8, 1990

## QUESTION PRESENTED FOR REVIEW

Whether there is any basis for reversing the holding of the United States Fifth Circuit Court of Appeal that the Outer Continental Shelf Lands Act supplies the applicable law to oilfield related services performed on the Outer Continental Shelf, particularly where the Fifth Circuit's decision follows and relies upon this Court's decisions in *Rodrigue v. Aetna Casualty & Surety Co.*, 395 U.S. 352 (1969) and *Herb's Welding, Inc. v. Gray*, 470 U.S. 414 (1985).

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MAY IT PLEASE THE COURT:

**I. STATEMENT OF THE CASE**

**A. Course of Proceedings and Disposition in Courts Below**

On March 6, 1987, Union Texas Petroleum Corporation ("UTP") instituted an interpleader complaint against PLT Engineering, Inc. ("PLT"), Brown & Root U.S.A., Inc. ("Brown & Root"), State Service Co., Inc. ("State Service"), and Sub Sea International, Inc. ("Sub Sea"). Power Well Service, Inc. ("Power Well") and Gulf Island IV, a Louisiana Partnership ("GI IV"), who had no contractual relationship with either UTP or PLT, were not named as defendants. The named defendants filed answers and asserted counterclaims against UTP, and by amended pleadings against UTP's partners, Agip Petroleum Co., Inc. and Minatome Corporation (hereinafter UTP, Agip and Minatome are sometimes collectively referred to as "petitioner").

On June 24, 1987, Power Well and GI IV (hereinafter collectively "Power Well") intervened in the district court proceedings (i) seeking a judgment recognizing their lien rights pursuant to the Louisiana Oil Well Lien Act, La. R.S. 9:4861 *et seq.*, and (ii) specifically averring that UTP could not by interpleader limit its liability to Power Well or any other claimants.

On August 27, 1987, Power Well filed a motion for summary judgment seeking a judgment (i) in the amount of \$93,551.00, with attorneys fees, interest and all costs of the proceeding, and (ii) recognizing its lien rights under

the Louisiana Oil Well Lien Act. Power Well also averred that the matter was improperly brought as an interpleader. The other defendants subsequently filed similar motions for summary judgment on their lien claims, and petitioner responded with an opposition and its own motion for summary judgment.

On March 10, 1988, the District Court issued a memorandum ruling on the cross motions for summary judgment, holding that (1) the Outer Continental Shelf Lands Act provided the applicable law for the services set forth by the lien claimants on petitioner's gas pipeline; (2) the contractual provisions to which petitioner was not a party could not be made applicable for the benefit of petitioner; (3) the type of pipeline in question was not excluded under a strict interpretation of the Louisiana Oil Well Lien Act; and (4) the fact that the work was performed on the Outer Continental Shelf did not preclude an application of the Louisiana Oil Well Lien Act where claimants recorded lien affidavits in the records of the adjacent parishes. Further, the District Court ruled that petitioner had improperly brought this action as an interpleader.

Based on these findings, the District Court rendered judgment dismissing the interpleader, granting Sub Sea's motion for summary judgment, and denying summary judgment to the other claimants on the basis that factual issues remained concerning the amounts of their claims. On May 18, 1988, the District Court reconsidered its ruling with regard to Power Well and filed a second memorandum ruling rendering summary judgment in Power Well's favor.

Stipulations were reached between petitioner and the other lien claimants, after which the District Court rendered judgments in favor of these lien claimants. Petitioner appealed the judgments of the District Court to the United States Fifth Circuit. On March 7, 1990, the Fifth Circuit rendered its decision, affirming in every respect the judgments of the district court. More specifically, the Fifth Circuit held that the Outer Continental Shelf Lands Act (43 U.S.C. 1333 *et seq.*), rather than maritime law, provided the applicable law to the construction of a gas pipeline on the Outer Continental Shelf. As such, the lien law of Louisiana, as the law of the adjacent state, was made applicable to the services provided by respondents herein.

On July 5, 1990, petitioner submitted its application for writ of certiorari seeking reversal of the decision of the U.S. Fifth Circuit.

#### **B. Statement of Facts.**

On August 15, 1986, UTP entered into an offshore construction contract with PLT for the design, fabrication and installation of a gas transportation system located on the Outer Continental Shelf adjacent to Vermilion Parish. UTP did not require and PLT did not provide performance and/or labor and material bonds. PLT entered into contracts with Brown & Root, State Service and Sub Sea, which required the subcontractors to perform certain tasks in connection with the construction of the pipeline.

From January 1, through January 14, 1987, Power Well provided the services of the M/V GULF ISLAND IV to State Service for its work on the pipeline. *Power Well*



*did not contract directly with either PLT or UTP.* Power Well received no payment for the services provided, despite demand for payment. On June 2, 1987, Power Well filed an affidavit of lien and privilege pursuant to the Louisiana Oil Well Lien Act against the petitioner's pipeline, which was recorded in the Mortgage Records of Vermilion Parish on June 4, 1987. Vermilion Parish is the Louisiana parish adjacent to the waters where the offshore work was performed. Power Well also filed its claim with the Mineral Management Service in Metairie, Louisiana. On June 24, 1987, Power Well intervened into the instant proceeding, seeking recognition of its lien rights under the Louisiana Oil Well Lien Act and judgment in its favor in the amount of \$93,551.00 plus attorney's fees, interest and costs as allowed by the lien act.

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## II. REASONS FOR DENYING THE WRIT

The decision below by the United States Fifth Circuit Court of Appeal does not warrant the granting of certiorari by this Court. (See Rule 17, Rules of the Supreme Court of the United States.) The decision creates no conflict between the circuits, is not of constitutional stature, and does not raise a novel or important federal question which requires review by this Court. In fact, the Fifth Circuit's decision is based upon and is consistent with previous decisions issued by this Court. Petitioner's request for writs is simply a last-ditch effort to reverse an unfavorable decision which was based on a long-standing line of decisions that petitioner deems unfavorable.

Despite the number of issues presented by petitioner in its appeal to the Fifth Circuit, this case primarily concerned the applicability of the Outer Continental Shelf Lands Act (43 U.S.C. 1333 *et seq.*) to the construction of a gas pipeline on the Outer Continental Shelf. In affirming the District Court's decisions that the OCSLA, rather than maritime law, provided the applicable law to these activities, the Fifth Circuit merely followed this Court's guidelines in *Rodrigue v. Aetna Casualty & Surety Co.*, 395 U.S. 352, 89 S.Ct. 1835 (1969) and *Herb's Welding, Inc. v. Gray*, 470 U.S. 414, 105 S.Ct. 1421 (1985).

In *Rodrigue, supra*, this court refused to apply general maritime law and held that the OCSLA provided the applicable law to an accident on a fixed structure on the Outer Continental Shelf. In so doing, this Court stated that general maritime law may only oust adopted state law on the Outer Continental Shelf when it applies of its own force without regard to the location of the pipeline at sea. *Id.* at 1839.

Here, the Fifth Circuit recognized that under *Rodrigue*, three (3) conditions are significant for adjacent state law to apply as surrogate federal law under OCSLA:

1. The controversy must arise on a situs covered by OCSLA (i.e. the subsoil, seabed or artificial structures permanently or temporarily attached thereto).
2. Federal maritime law must not apply of its own force.
3. The state law must not be inconsistent with federal law.

*Union Texas Petroleum Corporation v. PLT Engineering, Inc.*, 895 F.2d 1043, 1047 (5th Cir. 1990). In its analysis, the Fifth

Circuit demonstrated that all of these conditions were met in this case, which dealt with the construction of a pipeline on the Outer Continental Shelf. Therefore, the Fifth Circuit's decision follows the *Rodrigue* guidelines.

In *Herb's Welding v. Gray*, *supra*, this Court found the OCSLA applicable to a welder performing his services on the Outer Continental Shelf and in Louisiana waters. In describing his activities, the Court stated:

He built and maintained pipelines and the platforms themselves. There is nothing inherently maritime about those tasks. They are also performed on land, and their nature is not significantly altered by the marine environment, particularly since exploration and development of the Continental Shelf are not themselves maritime commerce.

*Herb's Welding*, 470 U.S. at 425, 105 S.Ct. at 1428.

In affirming the trial court, the Fifth Circuit primarily based its decision on *Herb's Welding*. In reversing a Fifth Circuit decision that the OCSLA did not apply to offshore drilling activity, this Court specifically stated:

The history of the Lands Act at the very least forecloses the Court of Appeals' holding that offshore drilling is a maritime activity and that any task essential thereto is maritime employment for LHWCA purposes.

*Herb's Welding*, 470 U.S. at 424, 105 S.Ct. at 1427. Indeed, in its instant decision (following *Herb's Welding*), the Fifth Circuit was mindful that "in *Herb's Welding*, the Supreme Court had specifically criticised the Fifth Circuit's 'expansive view of maritime employment.' " *Union Texas Petroleum*, 895 F.2d at 1049. The decision in the courts below that these oilfield related services are not maritime in

nature is consistent with this Court's holding in *Herb's Welding*.

When a circuit court follows and applies existing Supreme Court precedent in making its determination on a case, there is clearly no need for review by this Court.

Nor is this decision inconsistent with existing Fifth Circuit precedent. The Fifth Circuit has consistently held that maritime law does not prevail over the law of the adjacent state except in instances where the subject matter of the controversy bears the type of significant relationship to traditional maritime activities necessary to invoke admiralty jurisdiction. *Laredo Offshore Constructors, Inc. v. Hunt Oil Co.*, 754 F.2d 1223, 1231 (5th Cir. 1985). For example, as early as the *Continental Casualty Co. v. Associated Pipe & Supply Co.*, 447 F.2d 1041 (5th Cir. 1971), the Fifth Circuit applied Louisiana oil well lien law to services performed by crewboats for a pipeline project.

In *Laredo, supra*, the plaintiff (Laredo) brought an action in admiralty under a contract to construct a platform on the OCS. Laredo was charged with transporting materials and supplies to the work site, as well as performing labor in connection with the construction of the platform. The District Court dismissed Laredo's action for lack of subject matter jurisdiction.

On appeal, Laredo argued that because it had to engage numerous seamen and oceangoing vessels, its contract was within maritime jurisdiction and governed by maritime law. The Fifth Circuit rejected this contention, holding that the contract was governed by state law, adopted through the OCSLA, and not maritime law. The court held that the nature of the work involved (the

construction of a platform) was not related to traditional maritime activity.

The decision in the case below was consistent with the Fifth Circuit's previous holding in *Laredo*, and also *Thurmond v. Delta Well Surveyors*, 836 F.2d 952, 955 (5th Cir. 1988). Those cases demonstrate that in OCSLA situations maritime law will not prevail over the law of the adjacent state where the services do not relate to traditional maritime activities. Therefore, on the issues of this case, there is no need for a review of the Fifth Circuit's decision, as it is consistent with Supreme Court and Fifth Circuit precedent.

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### CONCLUSION

No basis exists for reversing the Fifth Circuit's decision below, as that Court merely followed established Supreme Court precedent. Therefore, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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